

ESB 5222 - H COMM AMD  
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 10.77.020 and 1998 c 297 s 30 are each amended to  
4 read as follows:

5 (1) At any and all stages of the proceedings pursuant to this  
6 chapter, any person subject to the provisions of this chapter shall be  
7 entitled to the assistance of counsel, and if the person is indigent  
8 the court shall appoint counsel to assist him or her. A person may  
9 waive his or her right to counsel; but such waiver shall only be  
10 effective if a court makes a specific finding that he or she is or was  
11 competent to so waive. In making such findings, the court shall be  
12 guided but not limited by the following standards: Whether the person  
13 attempting to waive the assistance of counsel, does so understanding:

- 14 (a) The nature of the charges;  
15 (b) The statutory offense included within them;  
16 (c) The range of allowable punishments thereunder;  
17 (d) Possible defenses to the charges and circumstances in  
18 mitigation thereof; and  
19 (e) All other facts essential to a broad understanding of the whole  
20 matter.

21 (2) Whenever any person is subjected to an examination pursuant to  
22 any provision of this chapter, he or she may retain an expert or  
23 professional person to perform an examination in his or her behalf. In  
24 the case of a person who is indigent, the court shall upon his or her  
25 request assist the person in obtaining an expert or professional person  
26 to perform an examination or participate in the hearing on his or her  
27 behalf. An expert or professional person obtained by an indigent  
28 person pursuant to the provisions of this chapter shall be compensated  
29 for his or her services out of funds of the department, in an amount  
30 determined by the secretary to be fair and reasonable.

1 (3) Any time the defendant is being examined by court appointed  
2 experts or professional persons pursuant to the provisions of this  
3 chapter, the defendant shall be entitled to have his or her attorney  
4 present.

5 (4) In a competency evaluation conducted under this chapter, the  
6 defendant may refuse to answer any question if he or she believes his  
7 or her answers may tend to incriminate him or her or form links leading  
8 to evidence of an incriminating nature.

9 (5) In a sanity evaluation conducted under this chapter, if a  
10 defendant refuses to answer questions or to participate in an  
11 examination conducted in response to the defendant's assertion of an  
12 insanity defense, the court shall exclude from evidence at trial any  
13 testimony or evidence from any expert or professional person obtained  
14 or retained by the defendant.

15 NEW SECTION. Sec. 2. This act applies to all examinations  
16 performed on or after the effective date of this act.

17 NEW SECTION. Sec. 3. If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected."

EFFECT: Retains the statutory privilege against self-  
incrimination for evaluations to determine competency to stand trial  
(but not for evaluations to determine sanity). Removes the requirement  
that a defendant's answers or participation in a sanity evaluation must  
be "in good faith" in order to avoid the prohibition on evidence from  
the defendant's own experts.

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